



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201421022**
Release Date: 5/23/2014
Date: February 27, 2014
UIL Code: 501.03-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Director, Exempt Organizations

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: January 7, 2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B= State
C= Director
R= Date
S= Date
T= Date
z= \$ Amount

UIL:

501.03-00
501.33-00
501.32-01

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issue

Have you failed to demonstrate that you meet the operational test by operating exclusively for an exempt purpose under section 501(c)(3) of the Code?

Yes, for the reasons stated below.

Facts

You were previously exempt from federal income tax as an organization under section

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501(c)(3) of the Code. On S, you were notified that your tax-exempt status had been revoked automatically because you had not filed an annual information return for three consecutive years. You filed a new Form 1023 on T requesting retroactive reinstatement of your tax exempt status.

You requested classification as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi). This was your foundation classification prior to your revocation. You also submitted Form 1023 schedules indicating you are a church, a school and a medical research organization and provide scholarships.

You incorporated under the not for profit laws of the state of B on R. Your purposes as stated in your original Articles of Incorporation and bylaws were very broad and include operation of military schools, drill teams, drum and bugle teams, to provide scholarships to needy students, to engage in charitable activities for the benefit of the general community; performing medical research negotiating contracts on behalf of doctors, nurses, technicians, managers, professionals etc; buy, hire, construct, maintain and operate theaters, halls, arenas, plants; purchase, erect, lease, or otherwise acquire and operate, recording studios, theaters, amusement parks, dance halls, studios, or other places of amusement; Compose, print, publish, distribute, sell or otherwise dispose of programs, music, plays, magazines, books, pamphlets and literature and to deal with, copyrights or other rights connected with the same; carry on advertising campaigns and a general advertising business and acquire, hold, own, dispose of and generally deal in grants, concessions, franchise and contracts of every kind.

Your bylaws also state additional purposes, such as borrowing money, issue bonds and debentures, notes and other obligations, acquiring shares of your stock, buy lease and acquire lands, and acquire, buy and sell patent rights, copyrights, inventions, and, trademarks.

You state you currently engage in charitable activities for the benefit of the general community and that your activities to date are clothing and feeding the homeless, spiritual counseling, tutoring and prayer. You did not provide any details to substantiate the activities. You have operated for more than 25 years. Your current facility is a single family home which is owned by C.

Your board of directors is made up of five family members. C, your founder, is also your President and Chief Executive Officer. C's son serves as your Vice President and C's daughter is the Treasurer. C's sister and grand-daughter serve as members of your board of directors. C and all the other related directors are to be compensated. Their compensation includes rent, furniture, food, utilities, vehicle, education, vacations, and clothing for work and medical, dental and legal expenses.

C has authored and copyrighted a course publication. The course is designed to develop teacher competence. You will use course material copyrighted by C in your curriculum for a fee.

You are designed to guide young people and their families in Christian activities. These include teacher colleges consisting of 4 building projects, a teaching institute, a teaching hospital with dorms an administration building and 66 classrooms. You also will obtain a DNA sequencing machine that will process 200 million DNA profiles within two weeks. You will then be able to rid police departments of their DNA testing backlogs while aiding the medical profession. You do not have the machine yet but a bank has offered C a web site where C can raise funds for you to acquire the machine. You provided no details of how, when and where these activities would be conducted.

You will offer a k-12 curriculum where students will have hands on training and your highest achieving teachers will be researchers. The students will also perform music in the marching band, drill teams etc. You will have military designed courses in math, science, engineering and construction which will include the manufacture of solar panels and windows and doors. You will also provide DNA whole body profiles at an undetermined low cost and make and mix concrete along with a 5 year study of adding fiberglass to the concrete. You provided no specific details of these activities.

You also provided a list of programs and services which include a supportive residential services program, project paycheck program, sojourner center, recuperative care program, HIV/AIDS programs, shelter program, voucher program for short term housing, alcohol and drug recovery program, veterans program, transitional program for homeless women, a walk in center for information and referrals, an adult learning center, and other programs that provide employment/job training and job placement etc. You will also offer voice mailboxes and substance abuse programs. You also provided a blank copy of a soccer team sign up form. Other than a two page listing of all these activities you provided no specific details.

You provided copies of loans C received from the US Department of Education and other college funding sources. You indicated that these amounts were a "debit to the foundation". You also provided the minutes of a board meeting where a resolution was passed stating that you would pay the costs of C's education along with all related expenses.

You state you are no longer providing shelter since a building where this activity was being conducted burned down to the ground. You provided no additional information with respect to this activity.

Your founder C has been the only source of your funds to date. Copies of bank

statements you provided show amounts being deposited into your account and withdrawals and debits made with an ATM/debit card in C's name. You provided no information on the use of the funds withdrawn or debits made. You show expenses totaling approximately \$150,000. You explained that this amount represented loans, specifically student loans, taken by C and that this amount has accumulated additional interest and the total at this time is approximately \$160,000.00. You also indicated estimated annual compensation for each of your directors in the range of \$40,000-\$45,000. You estimated a total annual budget of \$z million. This cost includes building of schools and colleges, installing wireless network infrastructure, master computer to provide satellite communication etc., and the cost to house and educate more than 200 students at a cost of approximately \$7,000 per child per year.

Your financial statements including bank statements show minimal activity. Your actual financial statements for completed tax years reflect zero income and no expenses for religious, charitable or educational activities. No expenses were listed for counseling, tutoring or helping the homeless.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it. Thus, to meet the requirements of this subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such

private interests.

Rev. Proc. 2014-9, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.03 provides that exempt status may be recognized in advance of the organization's operations if its proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. Section 4.03(2) states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 857 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973). The applicant for tax exempt status under section 501(c)(3) has the burden of showing it comes squarely within the terms of the law conferring the benefit sought.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

American Science Foundation v. Comm'r, T.C. Memo 1986-556, was a declaratory judgment action brought under section 7428 of the Code. The petitioner had applied for recognition of exemption under section 501(c)(3). Upon receipt of the application, the Service requested additional information about petitioner's intended methods of operation. In its final adverse determination, the Service ruled that petitioner had provided insufficient information to allow a favorable determination under the operational test. The Court concluded that "petitioner has failed to establish that it will operate exclusively in furtherance of exempt purposes."

The Church of Eternal Life and Liberty v. Commissioner, 86 T.C. 916 (1986) describes an organization in which the court wrote that private inurement is strongly suggested where an individual or small group of individuals are the principle contributors to an organization and that individual or small group of individuals have exclusive control over the management of the organization's funds.

Application of Law

You are not described in section 501(c)(3) of the Code and section 1.501(c)(3)-1(a)(1) of the regulations. You fail the operational test for exemption under 501(c)(3) because you are operated for the non-exempt purpose of raising funds to repay the loans of C your founder and director and you have failed to substantiate that your activities are as described in section 501(c)(3).

You are not described in Section 1.501(c)(3)-1(c)(1) of the regulations. Your activities do not further any exempt purposes. In fact you operate for the benefit of your founder by providing funds to repay the founder's loans and to promote her copyrighted material. You did not substantiate your counseling, tutoring or your activities for the homeless. You did not provide any information regarding your proposed activities and how they would differ from commercial businesses.

You operate for the private benefit of your founder C and the related family board members by using funds raised to pay the loans of C. Your organizational structure and manner of operation result in inurement to C. Therefore, you fail the operational test for exemption per section 1.501(c)(3)-1(d)(ii) of the regulations.

You listed a variety of activities in your application but provided no details. As required by Revenue Procedure 2013-9 you have not established that you are organized and operated exclusively for exempt purposes and not for the private benefit of your creators, designated individuals or organizations controlled by such private interests.

You are also like the organizations in Better Business Bureau since your operations include substantial non-exempt purposes. Specifically, your non-exempt purposes include inurement to C and C's family members.

Like the organizations in Christian Echoes National Ministry, Inc., Harding Hospital, Inc and American Science Foundation v. Comm'r you did not provide information in sufficient detail to demonstrate you meet the requirements for exemption and you have failed to establish that you qualify for exemption under section 501(c)(3) of the code.

You are similar to the Church of Eternal Life because you are also formed by a small group of individuals who have exclusive control over the management of your funds and operations. As a result of their exclusive control your founders benefit through the use of your facility, the setting of compensation based on their needs as well as your operations.

Conclusion

Based on the above facts and law, we conclude that you are not organized and operated for purposes described in section 501(c)(3) of the Code. Specifically you fail the operational test because your earnings inure to the benefit of your founder and president. Also you have failed to meet your burden of demonstrating that your activities qualify for exemption under section 501(c)(3) of the code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of why you disagree. Your protest statement must be filed within 30 days of the date of this letter and should include:

- Your organization's name, address, EIN number and a daytime phone number.
- A statement that the organization wants to protest the proposed determination.
- A copy of this letter showing the findings that you disagree with (or the date and IRS office symbols from the letter.
- An explanation of your reasons for disagreeing including any supporting documents.
- The law or authority if any, on which you are relying.

The protest statement may be signed by one of your officers or your representative. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

The protest statement should also include the following declaration.

"Under penalties of perjury, I declare that I have examined this protest including accompanying documents and, to the best of my knowledge and belief, the statement contains all relevant facts, and such facts are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your protest will be considered incomplete without this statement.

If an organization's representative signs and submits the protest, a substitute

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declaration must be included stating that the representative prepared the protest and any accompanying documents; and whether the representative personally knows (or does not know) that the statement of facts in the protest and any accompanying documents are true, correct..

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. In that case you must file a Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to seek a declaratory judgment in court at a later date because the court requires that you first exhaust administrative remedies. at the IRS. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Kenneth Corbin
Acting Director, Exempt Organizations

Enclosure: Publication 892